

SP

Notice of Allowability

Application No.

10/697,960

Applicant(s)

MANN ET AL.

Examiner

Carl H. Layno *Carl H. Layno* 6/28/05

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Paper No. 05022005.
2. ☒ The allowed claim(s) is/are 1-71 and 76-99.
3. ☒ The drawings filed on 02 May 2005 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>This paper</u> . |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>5/2/2005</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

DETAILED ACTION

1. Acknowledgment is made of applicant's amendment which was received by the Office on May 2, 2005.

2. Claims 72-74 have been canceled. Claims 1-71 and 75-99 are active.

Information Disclosure Statement

3. Acknowledgment is made of applicant's Information Disclosure Statement (PTO-1449), which was received by the Office on May 2, 2005.

Drawings

4. The corrected formal drawings were received on May 2, 2005. These drawings are approved by the Examiner.

Claim Rejections - 35 USC § 112

5. In view of applicant's modifications to claim 6, the Examiner is withdrawing the 35 U.S.C 112 2nd paragraph rejection, which was made against this claim in the last Office action.

Claim Rejections - 35 USC § 103

Art Unit: 3762

6. In view of applicant's claim cancellations, the Examiner is withdrawing the 35 U.S.C 103(a) rejection of Salo '283 in view of Stone et al '607, which was made against claims 72-74 in the last Office action.

Examiner's Amendment

7. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Salima A. Merani on June 28, 2005.

The application has been amended as follows:

-Cancel claim 75.

NOTE: The applicant agreed to cancel claim 75 without prejudice to expedite prosecution of this case.

Allowable Subject Matter

8. Claims 1-71 and 76-99 are allowed over the prior art for the same reasons stated previously in the last Office action.

Conclusion

Art Unit: 3762

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The Brockway et al '674 patent describes an implantable device having a wireless sensor, which may be located in any one of a patient's heart chambers (col.14, lines 45-46), and which communicates its findings to an ambulatory external receiver or to an implantable cardiac rhythm management device (Fig.5). Information from the external receiver may be downloaded into a computer for analysis or display (Abstract, lines 16-18). Unlike applicant's device, the device of Brockway et al does not produce a "parameter" based upon cardiac fluid pressure (independent claim 76) nor does it produce two treatment or communications signals (independent claims 1, 68, 69, 71, and 82), in the manner claimed by the applicant.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on Monday thru Thursday from 9 AM to 6 PM and every other Friday between 9AM and 5PM. A voice mail or E-mail message (carl.layno@uspto.gov) may be left if desired.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes, can be reached on (571) 272-4955. All faxed correspondence should be sent to the Office's Official FAX number (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Legal Instruments Examiner (LIE) Brenda Webb whose telephone number is (571) 272-4399.

Application/Control Number: 10/697,960
Art Unit: 3762

Page 5

Carl H. Layno

CARL LAYNO
PRIMARY EXAMINER

CHL
6/28/2005